







1 Defendant's services to create a similar offshore structure. According to Smith, Brockman not only  
2 wanted Smith and Defendant to create the Excelsior/Flash offshore structure, Brockman wanted the  
3 Excelsior/Flash structure created in a jurisdiction that would avoid scrutiny by the Internal Revenue  
4 Service.

5 Smith's testimony, corroborated by emails and correspondence between Smith and Defendant,  
6 establishes that the relationship between Defendant, Smith, Brockman, and Tamine constituted a  
7 criminal conspiracy as charged in Count One of the Indictment. The Indictment specifically states in  
8 Count One that Defendant was a member a conspiracy to defraud the United States with Smith, and  
9 others. Further, in its August 15, 2022 Notice to Defendant the United States informed Defendant of  
10 several individuals it deemed a member of this conspiracy. *See Exhibit 1*. On November 3, 2022, the  
11 United States added Brockman to this list. *See Exhibit 2*. The object of this conspiracy was to defraud  
12 the United States government, to wit: the Department of the Treasury, Internal Revenue Service, in the  
13 assessment and collection of federal income taxes owed by Smith on the income he deposited, under  
14 Brockman's direction, into the Excelsior/Flash structure created by Defendant. Brockman's directions  
15 to Smith, including the instruction to retain Defendant to create an offshore structure similar to the one  
16 Defendant created for Brockman, were statements in furtherance of this conspiracy and are admissible  
17 as non-hearsay pursuant to Fed. R. Evid. 801(d)(2)(E).

18 In the alternative, Brockman's instructions to Smith constituted non-hearsay offered not for the  
19 truth of the matter asserted, but for the purpose of providing context to Smith's actions. These actions  
20 include: 1) retaining Defendant to create Excelsior and Flash; 2) depositing a portion of Vista profits in  
21 foreign bank accounts in Flash's name; and 3) engaging in these actions in a manner to evade paying  
22 United States income taxes. As in *Cedeno-Cedeno*, wherein out-of-court statements by the government  
23 of Columbia were admitted as non-hearsay to provide to show the "effect on the listener," i.e. the  
24 reason the U.S. Coast Guard boarded the ship *Panga*, here Brockman's instructions to Smith can be  
25 construed in the same manner. *Cedeno-Cedeno*, 2016 WL 4376845 \*8 (SDCA 2016). Brockman's  
26 instructions to Smith in December 1999 will not be offered for the "truth of the matter asserted," but to  
27 provide context to Smith's actions, and that Smith acted in accordance with Brockman's instructions.

**CONCLUSION**

Accordingly, the United States respectfully moves this Court for admission, through Smith's testimony, of Brockman's instruction and direction to Smith to retain Defendant to create the Excelsior/Flash foreign structure permitting Smith to deposit a portion of his Vista income offshore without incurring any United States income tax, and to guarantee his obligations to Brockman.

Respectfully submitted: November 7, 2022

STEPHANIE M. HINDS  
United States Attorney

*s/ Corey J. Smith*  
COREY J. SMITH  
Senior Litigation Counsel  
Tax Division  
MICHAEL G. PITMAN  
Assistant United States Attorney  
BORIS BOURGET  
Trial Attorney  
Tax Division

**CERTIFICATE OF SERVICE**

I the undersigned do hereby certify that on the 7th of November 2022, I electronically filed the foregoing Government's Motion *In Limine* to Admit Statements of Robert Brockman Under Fed. R. Evid. 801(d)(2)(E) with the ECF electronic filing system, which will send notice of electronic filing to counsel of record.

*/s/Corey J. Smith*  
Senior Litigation Counsel  
Department of Justice  
Tax Division  
[Corey.Smith@usdoj.gov](mailto:Corey.Smith@usdoj.gov)  
(202)514-5230

Attorneys for United States of America